

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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In re

HOTI ENTERPRISES, L.P. and
HOTI REALTY MANAGEMENT CO., INC.,

Debtors.

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HOTI ENTERPRISES, L.P. and
HOTI REALTY MANAGEMENT CO., INC.,

Appellants,

against

Case No. 13-289

GEPMC 2007-C1 BURNETT STREET, LLC

Appellee.

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APPELLANT’S DESIGNATION OF RECORD AND STATEMENT OF ISSUES

Hoti Enterprises, L.P. and Hoti Realty Management Co., Inc., (collectively, the “Appellants”), having filed a notice of appeal under 28 U.S.C. § 158(a) to the United States Court of Appeals for the Second Circuit from the December 27, 2012 Opinion and Order of the United States District Court for the Southern District of New York, affirming the Bench Ruling and Order Denying Motion For Relief From Cash Collateral Order, entered on May 16, 2012 by the United States Bankruptcy Court for the Southern District of New York, hereby designate the following items for inclusion in the record on appeal and set forth their statement of issues to be presented on appeal, pursuant to Bankruptcy Rule 8006:

DESIGNATION OF RECORD

Bankruptcy Court Docket Items: In re Hoti Enterprises, LP, Case No. 10-24129

- 35 Motion to Approve Use of Cash Collateral and to Provide
Adequate Protection Therefor

- 43** Stipulation and Order signed on 12/22/2010 Consenting Use of Cash Collateral and Granting Adequate Protection to GECCMC 2007 C-1 Burnett Street, LLC.
- 52** Transcript regarding Hearing Held on November 22, 2010 RE: Motion for an Order Shortening Time; Limiting Notice and Scheduling a Hearing to Consider on an Expedited Basis the Motion of GECCMC 2007 C-1 Burnett Street; Motion for Relief From Stay/Motion of GECCMC 2007 C-1 Burnett Street for an Order Granting Relief From the Automatic Stay or Alternatively Dismissal of the Chapter 11 Cases. Remote electronic access to the transcript is restricted until 3/14/2011.
- 59** Motion to Withdraw as Attorney filed by James B. Glucksman on behalf of Rattet, Pasternak & Gordon-Oliver, LLP
- 61** Order signed on 11/18/2011 Granting Motion for Relief from Stay for creditor, GECCMC 2007 C-1 Burnett Street, LLC
- 65** Motion to Reconsider and Clarify, Under Fed. R. Civ. P. 60(b), as Applicable by Fed. R. Bankr. P. 9024, (A) the Order Granting Relief from the Automatic Stay and (B) the Servicer's Role with Regard to GECCMC 2007 C-1 Burnett Street, LLC in These Proceedings, filed on February 23, 2011
- 67** Objection of GECCMC 2007 C-1 Burnett Street, LLC to Debtors' Motion to Reconsider and Clarify, Under Fed. R. Civ. P. 60(b), as Applicable by Fed. R. Bankr. P. 9024, (A) the Order Granting Relief from the Automatic Stay and (B) the Servicer's Role with Regard to GECCMC 2007 C-1 Burnett Street, LLC in These Proceedings, filed on March 9, 2011
- 73** Motion of GECCMC 2007 C-1 Burnett Street, LLC for an Order (A) Finding the Debtors and Victor Dedvukaj in Contempt of Court, (B) Compelling Compliance with the Cash Collateral Order, and (C) Imposing Sanctions, filed on March 24, 2011
- 75** Transcript regarding Hearing Held on 01/13/11 RE: TRANSCRIPT OF MOTION FOR RELIEF FROM STAY/MOTION OF GECCMC; APPLICATION TO EMPLOY THE CARLTON GROUP.
- 76** Transcript regarding Hearing Held on 12/20/10 RE: TRANSCRIPT OF MOTION TO APPROVE USE OF CASH COLLATERAL AND TO PROVIDE ADEQUATE PROTECTION THEREFOR.
- 84** Order Granting Motion (A) Finding Hoti Enterprises, LP, Hoti Realty Management Co., Inc. and Victor Dedvukaj in Contempt of Court,

(B) Compelling Compliance with the Cash Collateral Order, and (C) Imposing Sanctions, entered on April 14, 2011.

- 90** Transcript of Hearing Held on April 11, 2011
- 111** Letter regarding case pending in Kings County Court, et.al., filed by Victor Dedvukaj
- 105** Motion of Victor Dedvukaj to Remove Sanctions Against Debtor (A) Objection of GECMC 2007 C-1 Burnett Street, LLC as a Creditor, (B) Objection to Finding Victor Dedvukaj in Contempt of Court (C) Imposing Sanctions Against DLA Piper LLP (D) Objecting to Removing Tanya Dwyer as My Lawyer, filed on October 11, 2011
- 114** Chapter 11 Plan Of Reorganization For Hoti Enterprises, L.P. And Hoti Realty Management Co., Inc.
- 126** Motion to Approve / Relief from Stipulation and Order Governing Debtors' Use of Cash Collateral and Related Matters Pursuant to Bankruptcy Rule 9024
- 152** Objection to Motion I Objection of GECMC 2007 C-1 Burnett Street, LLC to Debtors' Motion for Relief from Stipulation and Order Governing Debtors Use of Cash Collateral
- 157** Reply to Motion Debtors' Reply to Objection Concerning Motion for Relief From Stipulation and Order Governing Debtors' Use of Cash Collateral and Related Matters Pursuant to Bankruptcy Rule 9024
- 160** Letter Debtors' Letter Brief Re: Motion for Relief From Cash Collateral Stipulation and Order Pursuant to Bankruptcy Rule 9024 (related document(s) 126) filed by Douglas J. Pick on behalf of Hoti Enterprises, LP, Hoti Realty Management Co., Inc.. (Pick, Douglas) (Entered: 04/16/2012)
- 162** Affidavit of Victor Dedvukaj
- 163** Objection to Motion for confirmation of 1st Amended Disclosure Statement and Plan for Reorganization of the Debtors filed by Carl E. Person on behalf of Carl E. Person. (Person, Carl) (Entered: 04/23/2012)
- 170** Objection to Motion for confirmation of 1st Amended Disclosure Statement and Plan for Reorganization of the Debtors (and is not the Objections of Carl E. Person, which have been filed separately) - filed by Carl E. Person on behalf of Marash Dedvukaj, Gjeloš Dedvukaj, Maruka Dedvukaj, Violeta Dedvukaj, Victor Dedvukaj, Hoti Enterprises, LP, Hoti Realty Management Co., Inc.

- 176** Affidavit of Victor Dedvukaj
- 179** Memorandum of Law In Further Support Of Objection To Debtors' Motion For Relief From Stipulation And Order Governing Debtors' Use Of Cash Collateral
- 187** Declaration Of Steven Altman In Support Of Confirmation Of The Second Modified Chapter 11 Plan Of Reorganization For Hoti Enterprises, L.P. And Hoti Realty Management Co., Inc.
- 194** Objection to Confirmation of Amended Plan, Creditor Carl Person's Objections to GECMC's 2nd Amended Plan for Reorganization of the Debtors
- 195** Objection to Confirmation of Amended Plan, Objections by Debtors and Other Interested Persons to GECMC's 2nd Amended Plan for Reorganization of the Debtors
- 207** Transcript regarding Hearing Held on 4/5/12 RE: MOTION TO APPROVE STIPULATION AND ORDER GOVERNING DEBTORS USE OF CASH COLLATERAL AND RELATED MATTERS; OBJECTION TO GECMC 2007 C-1 BURNETT STREET TO DEBTORS MOTION FOR RELIEF FROM STIPULATION AND GOVERNING DEBTORS USE OF CASH COLLATERAL; DEBTORS REPLY TO OBJECTION CONCERNING MOTION FOR RELIEF FROM STIPULATION AND ORDER
- 210** Order signed on 5/16/2012 Denying Motion for Relief from Cash Collateral Order. (Related Doc# 126) (Webb, Lonnie) (Entered: 05/16/2012)
- 212** Transcript regarding Hearing Held on 5/3/12 RE: CONFIRMATION HEARING (RELATED DOCUMENT(S)114); DEBTORS OBJECTION TO CONFIRMATION OF FIRST MODIFIED CHAPTER 11 PLAN PROPOSED BY GECMC 2007 C-1 BURNETT STREET, LLC (RELATED DOCUMENT(S)131); APPLICATION FOR FINAL PROFESSIONAL COMPENSATION FOR RATTET PASTERNAK, LLP, DEBTORS ATTORNEY, PERIOD: 10/12/2010 TO 2/14/2011, FEE: \$130,688, EXPENSES: \$4,472.52, STATEMENT (COVER SHEET RELATING TO APPLICATION FOR FINAL ALLOWANCES (RELATED DOCUMENT(S)91).
- 218** Notice of Appeal (related document(s)210) filed by Gjeloš Dedvukaj, Marash Dedvukaj, Maruka Dedvukaj, Victor Dedvukaj, Violeta Dedvukaj. Appellant Designation due by 6/12/2012
- 227** Third Amended Plan
- 243** Order signed on 6/19/2012 Re: Findings of Fact, Conclusions of Law and Order Confirming The Third Modified Chapter 11 Plan of Reorganization for Hoti Enterprises, LP and Hoti Realty Management Co., Inc.

- 244 Transcript of Hearing Held on June 14, 2012
- 246 Copy of DECISION dated June 13, 2012 by the Honorable Yvonne Lewis Supreme Court, County of Kings.
- 273 Declaration of Steven Altman In Support of Objection of GECMC 2007 C-1 Burnett Street, LLC to Debtors' Motion for Reconsideration of Order Confirming Plan of Reorganization, Or In The Alternative, For A Stay Pending Appeal
- 275 Stipulation and Order with Respect to the Transfer of Funds Held by Receiver in Accordance with the Chapter 11 Plan and Confirmation Order
- 281 Transcript regarding Hearing Held on June 14, 2012 at 11:53 AM RE: CORRECTED TRANSCRIPT re: Notice of Hearing in Support of an Order Granting Pick & Zabicki, LLP Leave to Withdraw As Counsel to The Debtors; Application to Employ Carl E. Person, Esq. as Special Litigation counsel to the Debtor; Motion of GECMC 2007 C-1 Burnett Street, LLC for Entry of an Order Fixing and Establishing Cure Amounts in Connection with the Assumption and Assignment of Unexpired Leases, etc.

Bankruptcy Court Docket Items: In re Hoti Realty Management Co. Inc., Case No. 10-24130

- 31 Motion to Authorize/Declaration of Victor Dedvukaj

Bankruptcy Court Claims Register: In re Hoti Enterprises, LP Case No. 10-24129

- 8-1 Proof of Claim filed by GECMC 2007 C-1 Burnett Street, LLC
- 9-1 Proof of Claim filed by GECMC 2007 C-1 Burnett Street, LLC

STATEMENT OF ISSUES

1. Did the Court err in affirming the Order of the Bankruptcy Court entered on May 16, 2012 denying the motion for reconsideration of the cash collateral stipulation and order previously entered by the Bankruptcy Court?
2. Should Victor Dedvukaj's October 31, 2011 *pro se* filing in the Bankruptcy Court been deemed a motion for reconsideration within the Federal Rule of Civil Procedure 60(c)(1) one year rule?

3. Should the Bankruptcy Court have granted reconsideration under have been granted under Federal Rule of Civil Procedure 60(b)(6) based upon the allegation that Debtor's counsel entered into the cash collateral stipulation and order without consent?

4. Was the fraud alleged in the motion for reconsideration sufficient to constitute grounds for reconsideration beyond the Rule 60(c)(1) one year rule, under Federal Rule of Civil Procedure Rule 60(d)(1) or (d)(3)?

Dated: New York, New York
February 4, 2013

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